

VZCZCXRO0609  
OO RUEHLMC  
DE RUEHMU #0440/01 0582153  
ZNY CCCCC ZZH  
O 272153Z FEB 06  
FM AMEMBASSY MANAGUA  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5406  
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE IMMEDIATE  
RUEHBO/AMEMBASSY BOGOTA IMMEDIATE 1346  
RUEHCV/AMEMBASSY CARACAS IMMEDIATE 0554  
RUEHOT/AMEMBASSY QUITO IMMEDIATE 0438  
RUEHDG/AMEMBASSY SANTO DOMINGO IMMEDIATE 0501  
RUEHLMC/MILLENNIUM CHALLENGE CORP WASHDC IMMEDIATE  
RUCPDO/DEPT OF COMMERCE WASHINGTON DC IMMEDIATE

C O N F I D E N T I A L SECTION 01 OF 04 MANAGUA 000440

SIPDIS

SIPDIS

FOR WHA/CEN, WHA/EPSC, EB/CBA, L/CID, L/EB

E.O. 12958: DECL: 02/25/2016

TAGS: [ENV](#) [ETRD](#) [KIDE](#) [KIPR](#) [CVIS](#) [PREL](#) [BEXP](#) [NU](#)

SUBJECT: IMPASSE ON DBCP LAWSUITS UNDER NICARAGUA'S SPECIAL  
LAW 364

REF: A. A) 00 MANAGUA 464  
B. B) 01 MANAGUA 1622  
C. C) 02 STATE 20261  
D. D) 02 MANAGUA 655  
E. E) 02 MANAGUA 2984  
F. F) 02 MANAGUA 3282  
G. G) 04 MANAGUA 992  
H. H) MANAGUA 411

Classified By: Ambassador Paul A. Trivelli; Reasons 1.4 (d), (e)

1. (C) Summary: In Embassy's view, the only way out of the current impasse over Special Law 364, which targets U.S. companies in Nicaragua for Background

2. (C) Special Law 364 "For Judicial Cases Brought by People Affected by the Usage of DBCP-based Manufactured Pesticides" was drafted to force

3. (C) The new Bolanos government was initially prepared to facilitate an amendment to Law 364 with input from company lawyers, and with the e

4. (C) As unenforceable judgments piled up in the Nicaraguan court system with no relief in sight for the 17,000 plaintiffs, the Bolanos admir

5. (C) In early 2005, banana workers again marched from Chinandega and camped outside the National Assembly. They were persuaded to pull up st

6. (C) For its part, the National Assembly continued to take public positions -- but provide little concrete assistance -- on behalf of the banana workers. A September 2005 resolution reaffirmed the Assembly's determination to take no action to amend or repeal Law 364 until the law's mandate and objectives have been completely fulfilled.

Section 212f problematic

7. (C) Use of Section 212f for findings of visa ineligibility is not likely to be a viable lever for resolving issues related to Law 364 for a

8. (C) Judge Benavente has a long history of involvement in questionable judicial proceedings relating to land and other property. While it is very likely that she has committed acts of corruption and received benefits in return, it is doubtful whether the Embassy would be able to document her corruption sufficiently to meet the required standard. For all of these reasons, 212f is not likely to be a useful tool with Judge Benavente, nor with any other judges that might be involved in issuing Law 364 verdicts. Moreover, the public relations optic of the USG taking away visas of judges who "dared" to rule against US companies in favor of "defenseless" Nicaraguan "victims" would certainly not be positive and could hurt our ability to influence Nicaraguan events in other areas of USG interest.

Difficulty of Modifying Law 364

9. (C) As a "law of public interest," Law 364 cannot be modified by agreements between private parties. The rights conferred by such laws can only be renounced with respect to individuals who are party to the renunciation. Thus any of the claimants or claimant groups could accept a settlement and renounce the rights they obtained under Law 364, but the law would still be open to use/abuse for anyone who did not accept a settlement and for new claimants. It would be legally impossible (though given the cavalier attitude towards constitutionality of the Nicaraguan political class, not beyond the bounds of imagination) to overturn the law absent a declaration of unconstitutionality (which is unlikely without a political agreement), Assembly approval of a new and "better" law that conflicts with the current legislation, or a political deal that the Assembly deemed more beneficial to current and future claimants. If the Assembly did somehow modify the law, then previous judgments would be invalid under Nicaraguan jurisprudence. Also, the appellate or Supreme Court could overturn the lower court judgments (again, unlikely without a political deal -- a Dole appeal has been pending for over a year with no action), but law 364 does stipulate that compensation should be no lower than USD 100,000 per person.

Elements of a Political Settlement

10. (C) In the Embassy's view, the only way out of the current impasse is a political deal with an impartial non-judicial arbiter awarding res

What the status quo entails

11. (C) As things currently stand, over USD 886 million has been awarded in 17 local actions by two Nicaraguan judges. One of those courts is expected to issue an additional judgment on behalf of another 1,708 Nicaraguans who are seeking an additional USD 3.4 billion. Billions of dollars in claims are still pending, and new cases continue to be filed. However, none of the companies -- Dole, Dow Chemical or Shell Chemical -- maintain business interests in Nicaragua, nor will they engage in new investment here -- to the detriment of Nicaragua's economic growth and the investment climate in general.

¶12. (C) When the plaintiffs have attempted to enforce the judgments in the United States, the cases have been routinely thrown out. Dole and Shell lawyers regularly seek inclusion of language on the unreliability/corruption of the Nicaraguan judicial system and inequities of Law 364 in USG public documents (the National Trade Estimate, Investment Climate Statement -- and even the Human Rights Report), then cite these statements as evidence to help their case.

¶13. (C) Recently, the court which awarded the first judgments in 2002 ordered the attachment of trademarks belonging to the companies -- howev

¶14. (C) In our view, there is little immediate threat to the economic interests of the companies from Law 364 either in Nicaragua (where there  
TRIVELLI